



General Assembly

January Session, 2017

## ***Amendment***

LCO No. 7572



Offered by:

REP. ABERCROMBIE, 83<sup>rd</sup> Dist.

SEN. MARKLEY, 16<sup>th</sup> Dist.

SEN. MOORE, 22<sup>nd</sup> Dist.

REP. CASE, 63<sup>rd</sup> Dist.

To: House Bill No. 7190

File No. 331

Cal. No. 247

### ***"AN ACT CONCERNING A STUDY OF PROGRAMS ADMINISTERED BY THE DEPARTMENT OF SOCIAL SERVICES."***

1 Strike everything after the enacting clause and substitute the  
2 following in lieu thereof:

3 "Section 1. Subsection (d) of section 17b-99 of the general statutes is  
4 repealed and the following is substituted in lieu thereof (*Effective July*  
5 *1, 2017*):

6 (d) (1) The Commissioner of Social Services, or any entity with  
7 which the commissioner contracts for the purpose of conducting an  
8 audit of a service provider that participates as a provider of services in  
9 a program operated or administered by the department pursuant to  
10 this chapter or chapter 319t, 319v, 319y or 319ff, except a service  
11 provider for which rates are established pursuant to section 17b-340,  
12 shall conduct any such audit in accordance with the provisions of this

13 subsection. For purposes of this subsection, (A) "clerical error" means  
14 an unintentional typographical, scrivener's or computer error, (B)  
15 "extrapolation" means the determination of an unknown value by  
16 projecting the results of the review of a sample to the universe from  
17 which the sample was drawn, (C) "ninety-five per cent confidence  
18 level" means there is a probability of at least ninety-five per cent that  
19 the result is reliable, (D) "provider" means a person, public agency,  
20 private agency or proprietary agency that is licensed, certified or  
21 otherwise approved by the commissioner to supply services  
22 authorized by the programs set forth in said chapters, (E) "stratified  
23 sampling" means a method of sampling that involves the division of a  
24 population into smaller groups known as strata based on shared  
25 attributes, characteristics or similar paid claim amounts, (F)  
26 "statistically valid sampling and extrapolation methodology" means a  
27 methodology that is (i) validated by a statistician who has completed  
28 graduate work in statistics and has significant experience developing  
29 statistically valid samples and extrapolating the results of such  
30 samples on behalf of government entities, (ii) provides for the  
31 exclusion of highly unusual claims that are not representative of the  
32 universe of paid claims, (iii) has a ninety-five per cent confidence level  
33 or greater, and (iv) includes stratified sampling when applicable, and  
34 (G) "universe" means a defined population of claims submitted by a  
35 provider during a specific time period.

36 (2) Not less than thirty days prior to the commencement of any such  
37 audit, the commissioner, or any entity with which the commissioner  
38 contracts to conduct an audit of a participating provider, shall provide  
39 written notification of the audit to such provider and the statistically  
40 valid sampling and extrapolation methodology to be used in  
41 conducting such audit, unless the commissioner, or any entity with  
42 which the commissioner contracts to conduct an audit of a  
43 participating provider makes a good faith determination that (A) the  
44 health or safety of a recipient of services is at risk; or (B) the provider is  
45 engaging in vendor fraud. At the commencement of the audit, the  
46 commissioner, or any entity with which the commissioner contracts to

47 conduct an audit of a participating provider, shall disclose (i) the name  
48 and contact information of the assigned auditor or auditors, (ii) the  
49 audit location, including notice of whether such audit shall be  
50 conducted on-site or through record submission, and (iii) the manner  
51 by which information requested shall be submitted. No audit shall  
52 include claims paid more than thirty-six months from the date claims  
53 are selected for the audit. [A] The commissioner shall not apply an  
54 agency policy, guideline, bulletin or manual provision or other criteria  
55 to make determinations in an audit unless the policy, guideline,  
56 bulletin or manual provision or other criteria, together with the  
57 effective date, was promulgated and distributed to a provider prior to  
58 provision of a service included in a claim being audited. The  
59 commissioner shall accept a scanned copy of documentation  
60 supporting a claim [shall be acceptable] when the original  
61 documentation is unavailable.

62 (3) Any clerical error discovered in a record or document produced  
63 for any such audit shall not of itself constitute a wilful violation of  
64 program rules unless proof of intent to commit fraud or otherwise  
65 violate program rules is established. In determining which providers  
66 shall be subject to audits, the Commissioner of Social Services may  
67 give consideration to the history of a provider's compliance in addition  
68 to other criteria used to select a provider for an audit.

69 (4) A finding of overpayment or underpayment to a provider in a  
70 program operated or administered by the department pursuant to this  
71 chapter or chapter 319t, 319v, 319y or 319ff, except a provider for  
72 which rates are established pursuant to section 17b-340, shall not be  
73 based on extrapolation unless the total net amount of extrapolated  
74 overpayment calculated from a statistically valid sampling and  
75 extrapolation methodology exceeds one and three-quarters per cent of  
76 total claims paid to the provider for the audit period.

77 (5) A provider, in complying with the requirements of any such  
78 audit, shall be allowed not less than thirty days to provide  
79 documentation in connection with any discrepancy discovered and

80 brought to the attention of such provider in the course of any such  
81 audit. Such documentation may include evidence that errors  
82 concerning payment and billing resulted from a provider's transition  
83 to a new payment or billing service or accounting system. The  
84 commissioner shall not calculate an overpayment based on  
85 extrapolation or attempt to recover such extrapolated overpayment  
86 when the provider presents credible evidence that an error by the  
87 commissioner, or any entity with which the commissioner contracts to  
88 conduct an audit pursuant to this subsection, caused the overpayment,  
89 provided the commissioner may recover the amount of the original  
90 overpayment.

91 (6) The commissioner, or any entity with which the commissioner  
92 contracts, for the purpose of conducting an audit of a provider of any  
93 of the programs operated or administered by the department pursuant  
94 to this chapter or chapter 319t, 319v, 319y or 319ff, except a service  
95 provider for which rates are established pursuant to section 17b-340,  
96 shall produce a preliminary written report concerning any audit  
97 conducted pursuant to this subsection, and such preliminary report  
98 shall be provided to the provider that was the subject of the audit not  
99 later than sixty days after the conclusion of such audit.

100 (7) The commissioner, or any entity with which the commissioner  
101 contracts, for the purpose of conducting an audit of a provider of any  
102 of the programs operated or administered by the department pursuant  
103 to this chapter or chapter 319t, 319v, 319y or 319ff, except a service  
104 provider for which rates are established pursuant to section 17b-340,  
105 shall, following the issuance of the preliminary report pursuant to  
106 subdivision (6) of this subsection, hold an exit conference with any  
107 provider that was the subject of any audit pursuant to this subsection  
108 for the purpose of discussing the preliminary report. Such provider  
109 may present evidence at such exit conference refuting findings in the  
110 preliminary report.

111 (8) The commissioner, or any entity with which the commissioner  
112 contracts, for the purpose of conducting an audit of a service provider,

113 shall produce a final written report concerning any audit conducted  
114 pursuant to this subsection. Such final written report shall be provided  
115 to the provider that was the subject of the audit not later than sixty  
116 days after the date of the exit conference conducted pursuant to  
117 subdivision (7) of this subsection, unless the commissioner, or any  
118 entity with which the commissioner contracts for the purpose of  
119 conducting an audit of a service provider, agrees to a later date or  
120 there are other referrals or investigations pending concerning the  
121 provider.

122 (9) Any provider aggrieved by a decision contained in a final  
123 written report issued pursuant to subdivision (8) of this subsection  
124 may, not later than thirty days after the receipt of the final report,  
125 request, in writing, a contested case hearing in accordance with  
126 chapter 54. Such request shall contain a detailed written description of  
127 each specific item of aggrievement. The designee of the commissioner  
128 who presides over the hearing shall be impartial and shall not be an  
129 employee of the Department of Social Services Office of Quality  
130 Assurance or an employee of an entity with which the commissioner  
131 contracts for the purpose of conducting an audit of a service provider.  
132 A provider shall be permitted to raise during such hearing that a  
133 negative audit finding was due to a provider's compliance with a state  
134 or federal law or regulation. Following review on all items of  
135 aggrievement, the designee of the commissioner who presides over the  
136 hearing shall issue a final decision not later than ninety days following  
137 the close of evidence or the date on which final briefs are filed,  
138 whichever occurs later. When a provider requests a hearing pursuant  
139 to this subdivision, and the provider is contesting an overpayment  
140 amount based on extrapolation, the Department of Social Services shall  
141 not recoup the overpayment amount at issue until a final decision is  
142 issued after the hearing.

143 (10) The provisions of this subsection shall not apply to any audit  
144 conducted by the Medicaid Fraud Control Unit established within the  
145 Office of the Chief State's Attorney.

146 (11) The commissioner shall provide free training to providers on  
147 how to enter claims to avoid errors and shall post information on the  
148 department's Internet web site concerning the auditing process and  
149 methods to avoid clerical errors. [Not later than February 1, 2015, the]  
150 The commissioner shall establish and publish on the department's  
151 Internet web site audit protocols to assist the Medicaid provider  
152 community in developing programs to improve compliance with  
153 Medicaid requirements under state and federal laws and regulations,  
154 provided audit protocols may not be relied upon to create a  
155 substantive or procedural right or benefit enforceable at law or in  
156 equity by any person, including a corporation. The commissioner shall  
157 establish audit protocols for specific providers or categories of service,  
158 including, but not limited to: (A) Licensed home health agencies, (B)  
159 drug and alcohol treatment centers, (C) durable medical equipment,  
160 (D) hospital outpatient services, (E) physician and nursing services, (F)  
161 dental services, (G) behavioral health services, (H) pharmaceutical  
162 services, (I) emergency and nonemergency medical transportation  
163 services, and (J) [not later than January 1, 2016,] homemaker  
164 companion services. The commissioner shall ensure that the  
165 Department of Social Services, or any entity with which the  
166 commissioner contracts to conduct an audit pursuant to this  
167 subsection, has on staff or consults with, as needed, a medical or dental  
168 professional who is experienced in the treatment, billing and coding  
169 procedures used by the provider being audited. There shall be a  
170 presumption in favor of the medical judgment of the treating physician  
171 in determining medical necessity of emergency treatment. When  
172 conducting an audit pursuant to this subsection, any retroactive denial  
173 of such emergency treatment by the department may only be made by  
174 a physician trained in emergency medicine.

175 Sec. 2. (*Effective from passage*) (a) For purposes of this section, (1)  
176 "electronic visit verification" means the system required pursuant to  
177 the 21<sup>st</sup> Century Cures Act, P.L. 114-255, that verifies the date, time and  
178 site of a provider visit and services offered to a client in a home and  
179 community-based service program administered by the Department of

180 Social Services and funded under Medicaid, (2) "nonmedical provider"  
181 means a Medicaid-enrolled provider of home care who is not licensed  
182 by the Department of Public Health, and (3) "medical home health care  
183 provider" means a Medicaid-enrolled provider licensed by the  
184 Department of Public Health with Medicare certification to provide  
185 medically skilled home health care services under the supervision of a  
186 registered nurse.

187 (b) Notwithstanding the provisions of section 17b-99 of the general  
188 statutes, as amended by this act, the Commissioner of Social Services  
189 shall not withhold any payments, assess any penalties or extrapolate  
190 any overpayments due to errors related to implementation of a state-  
191 required electronic visit verification system by (1) a nonmedical home  
192 care provider from January 1, 2017, to May 1, 2017, inclusive, and (2) a  
193 medical home health care provider from April 1, 2017, to August 1,  
194 2017, inclusive.

195 (c) The Commissioner of Social Services shall submit a report, in  
196 accordance with the provisions of section 11-4a of the general statutes,  
197 to the joint standing committee of the General Assembly having  
198 cognizance of matters relating to human services on the  
199 implementation of the state-required electronic visit verification  
200 system not later than July 1, 2018. Such report shall include (1) any  
201 problems experienced in implementation of the system, (2)  
202 recommendations to resolve identified problems, and (3) cost savings  
203 identified as a result of the system."

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|---|---------------------|-------------|
| This act shall take effect as follows and shall amend the following sections: |                     |             |
| Section 1   | <i>July 1, 2017</i> | 17b-99(d)   |
| Sec. 2  | <i>from passage</i> | New section |